

**Introduced in the House: 2/12/03**

**Referred: State Affairs, Resources, House Special Committee on Fisheries**

**Introduced in the Senate: 2/12/03**

**Referred: State Affairs, Resources**

### **EXECUTIVE ORDER NO. 107**

Under the authority of art. III, sec. 23, of the Alaska Constitution, I order the following:

\* **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section to read:

FINDINGS. As governor, I find that the transfer of certain functions relating to the protection of fish habitat in rivers, lakes, and streams of the state, and related functions regarding fish and game protection, from the Department of Fish and Game to a deputy commissioner of natural resources would be in the best interests of efficient administration. To preserve the existing statutory balance between stream preservation and forest stewardship, the role currently assigned to the commissioner of natural resources under the Forest Resources and Practices Act is transferred to the state forester in the division of forestry, Department of Natural Resources. These transfers will permit closer and more balanced coordination, improving the planning process for projects affecting these bodies of water.

\* **Sec. 2.** AS 16.05.920(a) is amended to read:

(a) Unless permitted by AS 16.05 - AS 16.40, by AS 41.14, or by regulation adopted under AS 16.05 - AS 16.40 or AS 41.14, a person may not take, possess, transport, sell, offer to sell, purchase, or offer to purchase fish, game, or marine aquatic plants, or any part of fish, game, or aquatic plants, or a nest or egg of fish or game.

\* **Sec. 3.** AS 16.05.925(a) is amended to read:

(a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723, 16.05.783, 16.05.831, [16.05.860, AND] 16.05.905, and AS 41.14.860, a person who violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or

1 AS 16.20, is guilty of a class A misdemeanor.

2 \* **Sec. 4.** AS 16.20.070 is amended to read:

3 **Sec. 16.20.070. Relationship to other laws.** AS 16.20.050 and 16.20.060 do  
4 not affect AS 41.14.870 - 41.14.890 [AS 16.05.870 - 16.05.890].

5 \* **Sec. 5.** AS 41 is amended by adding a new chapter to read:

6 **Chapter 14. Rivers, Lakes, and Streams.**

7 **Sec. 41.14.150. Enforcement authority.** The following persons are peace  
8 officers of the state and they shall enforce this chapter:

9 (1) an employee of the department authorized by the deputy  
10 commissioner;

11 (2) a police officer in the state;

12 (3) any other person authorized by the deputy commissioner.

13 **Sec. 41.14.160. Duty to arrest.** Each peace officer designated in  
14 AS 41.14.150 shall arrest a person violating a provision of this chapter, or any  
15 regulation adopted under this chapter, in the peace officer's presence or view, and shall  
16 take the person for examination or trial before an officer or court of competent  
17 jurisdiction unless in the judgment of the peace officer it would be in the state's best  
18 interest to issue a warning or a citation under AS 41.14.165.

19 **Sec. 41.14.165. Form and issuance of citation.** (a) When a peace officer  
20 stops or contacts a person concerning a violation of this chapter or of a regulation  
21 adopted under this chapter that is a misdemeanor, the peace officer may, in the  
22 officer's discretion, issue a citation to the person as provided in AS 12.25.180.

23 (b) The supreme court shall specify by rule or order those misdemeanors that  
24 are appropriate for disposition without court appearance, and shall establish a schedule  
25 of bail amounts. Before establishing or amending the schedule of bail amounts  
26 required by this subsection, the supreme court shall appoint and consult with an  
27 advisory committee consisting of two officers of the division of fish and wildlife  
28 protection of the Department of Public Safety, two representatives of the department,  
29 two district court judges, and the chairpersons of the House and Senate Judiciary  
30 Committees of the legislature. The maximum bail amount for an offense may not  
31 exceed the maximum fine specified by law for that offense. If the misdemeanor for

1 which the citation is issued may be disposed of without court appearance, the issuing  
2 peace officer shall write on the citation the amount of bail applicable to the violation.

3 (c) A person cited for a misdemeanor for which a bail amount has been  
4 established under (b) of this section may, within 15 days after the date of the citation,  
5 mail or personally deliver to the clerk of the court in which the citation is filed by the  
6 peace officer

7 (1) the amount of bail indicated on the citation for that offense; and

8 (2) a copy of the citation indicating that the right to an appearance is  
9 waived, a plea of no contest is entered and the bail is forfeited.

10 (d) When bail has been forfeited under (c) of this section, a judgment of  
11 conviction shall be entered. Forfeiture of bail and all seized items is a complete  
12 satisfaction for the misdemeanor. The clerk of the court accepting the bail shall  
13 provide the offender with a receipt stating that fact if requested.

14 (e) If the person cited fails to pay the bail amount established under (b) of this  
15 section or to appear in court as required, the citation is considered a summons for a  
16 misdemeanor.

17 (f) Notwithstanding other provisions of law, if a person cited for a  
18 misdemeanor for which a bail amount has been established under (b) of this section  
19 appears in court and is found guilty, the penalty that is imposed for the offense may  
20 not exceed the bail amount for that offense established under (b) of this section.

21 **Sec. 41.14.170. Power to execute warrant.** Each peace officer designated in  
22 AS 41.14.150 may execute a warrant or other process issued by an officer or court of  
23 competent jurisdiction for the enforcement of this chapter, and may, with a search  
24 warrant, search any place at any time. The judge of a court having jurisdiction may,  
25 upon proper oath or affirmation showing probable cause, issue a warrant in all cases.

26 **Sec. 41.14.180. Power to search without warrant.** Each peace officer  
27 designated in AS 41.14.150 may without a warrant search any thing or place if the  
28 search is reasonable or is not protected from searches and seizures without warrant  
29 within the meaning of art. I, sec. 14, Alaska Constitution, which specifically  
30 enumerates "persons, houses and other property, papers, and effects." However,  
31 before a search without warrant is made a signed written statement by the person

1 making the search shall be submitted to the person in control of the property or object  
 2 to be searched, stating the reason the search is being conducted. A written receipt  
 3 shall be given by the person conducting the search for property which is taken as a  
 4 result of the search. The enumeration of specific things does not limit the meaning of  
 5 words of a general nature.

6 **Sec. 41.14.190. Seizure and disposition of equipment.** Boats, aircraft,  
 7 automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a  
 8 violation of this chapter or a regulation adopted under this chapter may be seized  
 9 under a valid search, and all fish and game, or parts of fish and game, or nests or eggs  
 10 of birds, taken, transported, or possessed contrary to the provisions of this chapter or a  
 11 regulation adopted under this chapter shall be seized by any peace officer designated  
 12 in AS 41.14.150. Upon conviction of the offender or upon judgment of the court  
 13 having jurisdiction that the item was taken, transported, or possessed in violation of  
 14 this chapter or a regulation adopted under this chapter, all fish and game, or parts of  
 15 them are forfeited to the state and shall be disposed of as directed by the court. If sold,  
 16 the proceeds of the sale shall be transmitted to the proper state officer for deposit in  
 17 the general fund. Boats, aircraft, or other vehicles, sleds, and other paraphernalia  
 18 seized under the provisions of this chapter or a regulation adopted under this chapter,  
 19 unless forfeited by order of the court, shall be returned, after completion of the case  
 20 and payment of the fine, if any.

21 **Sec. 41.14.195. Forfeiture of equipment.** (a) Vessels, aircraft, other motor  
 22 vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this  
 23 chapter, or regulations adopted under this chapter, and all fish and game or parts of  
 24 fish and game or nests or eggs of birds taken, transported, or possessed contrary to the  
 25 provisions of this chapter, or regulations adopted under this chapter, may be forfeited  
 26 to the state

27 (1) upon conviction of the offender in a criminal proceeding of a  
 28 violation of this chapter in a court of competent jurisdiction; or

29 (2) upon judgment of a court of competent jurisdiction in a proceeding  
 30 in rem that an item specified above was used in or in aid of a violation of this chapter  
 31 or a regulation adopted under this chapter.

1 (b) Items specified in (a) of this section may be forfeited under this section  
2 regardless of whether they were seized before instituting the forfeiture action.

3 (c) An action for forfeiture under this section may be joined with an  
4 alternative action for damages brought by the state to recover damages for the value of  
5 fish and game or parts of them or nests or eggs of birds taken, transported, or  
6 possessed contrary to the provisions of this chapter or a regulation adopted under it.

7 (d) It is no defense that the person who had the item specified in (a) of this  
8 section in possession at the time of its use and seizure has not been convicted or  
9 acquitted in a criminal proceeding resulting from or arising out of its use.

10 (e) Forfeiture may not be made of an item subsequently sold to an innocent  
11 purchaser in good faith. The burden of proof as to whether the purchaser purchased  
12 the item innocently and in good faith shall be on the purchaser.

13 (f) An item forfeited under this section shall be disposed of at the discretion of  
14 the department. Before the department disposes of an aircraft it shall consider transfer  
15 of ownership of the aircraft to the Alaska Wing, Civil Air Patrol.

16 **Sec. 41.14.200. Power to administer oaths.** Each peace officer designated in  
17 AS 41.14.150 may administer to or take from any person, an oath, affirmation, or  
18 affidavit when it is for use in a prosecution or proceeding under or in the enforcement  
19 of this chapter.

20 **Sec. 41.14.840. Fishway required.** If the deputy commissioner considers it  
21 necessary, every dam or other obstruction built by any person across a stream  
22 frequented by salmon or other fish shall be provided by that person with a durable and  
23 efficient fishway and a device for efficient passage for downstream migrants. The  
24 fishway or device or both shall be maintained in a practical and effective manner in  
25 the place, form, and capacity the deputy commissioner approves, for which plans and  
26 specifications shall be approved by the deputy commissioner upon application. The  
27 fishway or device shall be kept open, unobstructed, and supplied with a sufficient  
28 quantity of water to admit freely the passage of fish through it.

29 **Sec. 41.14.850. Hatchery required.** If a fishway over a dam or obstruction is  
30 considered impracticable by the deputy commissioner because of cost, the owner of  
31 the dam or obstruction, in order to compensate for the loss resulting from the dam or

1 obstruction shall, at the owner's option

2 (1) pay a lump sum acceptable to the deputy commissioner to the state  
3 fish and game fund;

4 (2) convey to the state a site of a size satisfactory to the deputy  
5 commissioner at a place mutually satisfactory to both parties, and erect on it a fish  
6 hatchery, rearing ponds, necessary buildings, and other facilities according to plans  
7 and specifications furnished by the commissioner of fish and game, and give a good  
8 and sufficient bond to furnish water, lights, and necessary money to operate and  
9 maintain the hatchery and rearing ponds; or

10 (3) enter into an agreement with the deputy commissioner, secured by  
11 good and sufficient bond, to pay to the fish and game fund the initial amount of money  
12 and annual payments thereafter that the commissioner of fish and game considers  
13 necessary to expand, maintain, and operate additional facilities at existing hatcheries  
14 within a reasonable distance of the dam or obstruction.

15 **Sec. 41.14.860. Penalty for violating fishway and hatchery requirements.**

16 (a) The owner of a dam or obstruction who fails to comply with AS 41.14.840 or  
17 41.14.850 or a regulation adopted under AS 41.14.840 or 41.14.850 within a  
18 reasonable time specified by written notice from the deputy commissioner is guilty of  
19 a misdemeanor, and is punishable by a fine of not more than \$1,000. Each day the  
20 owner fails to comply constitutes a separate offense.

21 (b) In addition to the fine, the dam or other obstruction managed, controlled,  
22 or owned by a person violating AS 41.14.840 or 41.14.850 or a regulation adopted  
23 under AS 41.14.840 or 41.14.850 is a public nuisance and is subject to abatement.

24 **Sec. 41.14.870. Protection of fish and game.** (a) The deputy commissioner  
25 shall, in accordance with AS 44.62 (Administrative Procedure Act), specify the  
26 various rivers, lakes, and streams or parts of them that are important for the spawning,  
27 rearing, or migration of anadromous fish.

28 (b) If a person or governmental agency desires to construct a hydraulic  
29 project, or use, divert, obstruct, pollute, or change the natural flow or bed of a  
30 specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or  
31 log-dragging equipment in the bed of a specified river, lake, or stream, the person or

1 governmental agency shall notify the deputy commissioner of this intention before the  
2 beginning of the construction or use.

3 (c) The deputy commissioner shall acknowledge receiving the notice by return  
4 first class mail. If the deputy commissioner determines that the following information  
5 is required, the letter of acknowledgement shall require the person or governmental  
6 agency to submit to the deputy commissioner:

7 (1) full plans and specifications of the proposed construction or work;

8 (2) complete plans and specifications for the proper protection of fish  
9 and game in connection with the construction or work, or in connection with the use;  
10 and

11 (3) the approximate date the construction, work, or use will begin.

12 (d) The deputy commissioner shall approve the proposed construction, work,  
13 or use in writing unless the deputy commissioner finds the plans and specifications  
14 insufficient for the proper protection of fish and game. Upon a finding that the plans  
15 and specifications are insufficient for the proper protection of fish and game, the  
16 deputy commissioner shall notify the person or governmental agency that submitted  
17 the plans and specifications of that finding by first class mail. The person or  
18 governmental agency may, within 90 days of receiving the notice, initiate a hearing  
19 under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630.

20 **Sec. 41.14.880. Construction without approval prohibited.** If a person or  
21 governmental agency begins construction on a work or project or use for which notice  
22 is required by AS 41.14.870 without first providing plans and specifications subject to  
23 the approval of the deputy commissioner for the proper protection of fish and game,  
24 and without first having obtained written approval of the deputy commissioner as to  
25 the adequacy of the plans and specifications submitted for the protection of fish and  
26 game, the person or agency is guilty of a misdemeanor. If a person or governmental  
27 agency is convicted of violating AS 41.14.870 - 41.14.895 or continues a use, work, or  
28 project without fully complying with AS 41.14.870 - 41.14.895, the use, work, or  
29 project is a public nuisance and is subject to abatement. The cost of restoring a  
30 specified river, lake, or stream to its original condition shall be borne by the violator  
31 and shall be in addition to the penalty imposed by the court.

1           **Sec. 41.14.890. Exemption for emergency situations.** In an emergency  
 2 arising from weather or stream flow conditions, the deputy commissioner, through  
 3 authorized representatives, shall issue oral permits to a riparian owner for removing  
 4 obstructions or for repairing existing structures without the necessity of submitting  
 5 prepared plans and specifications as required by AS 41.14.870.

6           **Sec. 41.14.895. Penalty for causing material damage.** If a person or  
 7 governmental agency fails to notify the deputy commissioner of any construction or  
 8 use that causes material damage to the spawning beds or prevents or interferes with  
 9 the migration of anadromous fish, or by neglect or noncompliance with plans and  
 10 specifications required and approved by the deputy commissioner causes material  
 11 damage to the spawning beds or prevents or interferes with the migration of  
 12 anadromous fish, the person or governmental agency shall be guilty of a misdemeanor.

13           **Sec. 41.14.900. Penalty for violations of AS 41.14.870 - 41.14.895.** (a) A  
 14 person who violates AS 41.14.870 - 41.14.895 is guilty of a class A misdemeanor.

15           (b) The court shall transmit the proceeds of all fines to the proper state officer  
 16 for deposit in the general fund of the state.

17           **Sec. 41.14.990. Definitions.** In this chapter, unless the context otherwise  
 18 requires,

- 19                   (1) "commissioner" means the commissioner of natural resources;
- 20                   (2) "department" means the Department of Natural Resources;
- 21                   (3) "deputy commissioner" means the deputy commissioner of natural  
 22 resources appointed under AS 44.37.055;
- 23                   (4) "fish" has the meaning given in AS 16.05.940;
- 24                   (5) "game" has the meaning given in AS 16.05.940;
- 25                   (6) "take" has the meaning given in AS 16.05.940.

26   \* **Sec. 6.** AS 41.17.010 is amended to read:

27           **Sec. 41.17.010. Declaration of intent.** The legislature declares that

- 28                   (1) the forest resources of Alaska are among the most valuable natural  
 29 resources of the state, and furnish timber and wood products, fish and wildlife,  
 30 tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;
- 31                   (2) economic enterprises and other activities and pursuits derived from



1 forest resources warrant the continuing recognition and support of the state;

2 (3) the state has a fundamental obligation to ensure that management  
3 of forest resources guarantees perpetual supplies of renewable resources, provides  
4 nonrenewable resources in a manner consistent with that obligation, and serves the  
5 needs of all Alaska for the many products, benefits, and services obtained from them;

6 (4) government administration of forest resources should combine  
7 professional management services, regulatory measures, and economic incentives in a  
8 complementary fashion, and should draw upon the expertise of professional foresters  
9 in conjunction with other disciplines;

10 (5) under the leadership of the Department of Environmental  
11 Conservation as lead agency, the state should exercise its full responsibility and  
12 authority for control of nonpoint source pollution with respect to the Federal Water  
13 Pollution Control Act, as amended;

14 (6) subject to AS 41.17.098(c), the provisions of this chapter, and  
15 regulations adopted under this chapter, with the approval of the Department of  
16 Environmental Conservation, establish the nonpoint source pollution requirements  
17 under state law and sec. 319 of the Clean Water Act for activities subject to this  
18 chapter;

19 (7) except for activities subject to **AS 41.14.840 or 41.14.870**  
20 [AS 16.05.840 OR 16.05.870] and regulations authorized by those sections, this  
21 chapter and regulations adopted under this chapter establish the fish habitat protection  
22 standards, policies, and review processes under state law.

23 \* **Sec. 7.** AS 41.17.041(e) is amended to read:

24 (e) The division shall serve as staff to the board. The department, the **deputy**  
25 **commissioner** [DEPARTMENT OF FISH AND GAME], and the Department of  
26 Environmental Conservation shall provide technical staffing and information as  
27 needed by the board.

28 \* **Sec. 8.** AS 41.17.047(c) is amended to read:

29 (c) The board, working with the **division** [DEPARTMENT], the Department  
30 of Environmental Conservation, the **deputy commissioner** [DEPARTMENT OF  
31 FISH AND GAME], other affected agencies and parties, and the forest-dependent

1 industries, shall conduct an annual survey of research needs related to forest practices.  
 2 The board shall review research proposals and shall make recommendations to  
 3 promote research projects that would address these needs to the governor and the  
 4 legislature.

5 \* **Sec. 9.** AS 41.17.047(d) is amended to read:

6 (d) The board shall coordinate the monitoring of the implementation and  
 7 effectiveness of this chapter, the regulations, and best management practices adopted  
 8 under this chapter in meeting state water quality standards, fish and wildlife habitat  
 9 requirements, and other forestry objectives. The board shall report annually to the  
 10 governor on the effectiveness of this chapter and regulations adopted under it, with its  
 11 recommendations for changes and for needed research and monitoring. The board  
 12 shall notify the legislature that the annual report is available. The state forester, the  
 13 **deputy commissioner** [DEPARTMENT OF FISH AND GAME], and the Department  
 14 of Environmental Conservation shall each present an annual report, independently, to  
 15 the board on the effectiveness of this chapter, the regulations, and best management  
 16 practices adopted under this chapter that protect the resources for which they have  
 17 statutory responsibility, and shall make recommendations for changes to correct  
 18 procedural or substantive problems. The board shall include the reports as part of its  
 19 annual report. The board shall hold hearings at least once annually in southeast,  
 20 southcentral, and interior Alaska for purposes of taking public testimony on the  
 21 subjects.

22 \* **Sec. 10.** AS 41.17.055 is amended to read:

23 **Sec. 41.17.055. Powers and duties of the state forester**  
 24 **[COMMISSIONER].** (a) The **state forester** [COMMISSIONER] may designate  
 25 and operate experimental and research forests on state land consistent with the  
 26 limitations of AS 38.05.300. Laboratories and other facilities may be employed in  
 27 conjunction with those forests.

28 (b) The **state forester** [COMMISSIONER] may establish and maintain forest  
 29 vegetation nurseries and greenhouses for planting stock to be made available, with or  
 30 without charge, to organizations, institutions, government agencies, individuals, and  
 31 businesses for reforestation, afforestation, and related purposes.

(c) The state forester [COMMISSIONER] is authorized to undertake cooperative forestry programs, extension services, and education programs, and to otherwise offer a full range of professional management services to the interested public. When the state forester [COMMISSIONER] considers it beneficial, the state forester [COMMISSIONER] may participate in federal assistance programs by accepting assistance in whatever form offered.

(d) The state forester [COMMISSIONER] may develop regulations under this chapter as part of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended. However, the Department of Environmental Conservation is the lead agency for water quality and control of nonpoint source pollution under that Act, and the regulations are therefore subject to the approval of the commissioner of environmental conservation.

(e) In the administration of this chapter, the state forester [COMMISSIONER] shall consult with and draw upon the expertise of interested organizations, enterprises, individuals, government agencies, educational institutions, and landowners. The state forester [COMMISSIONER] may enter into cooperative agreements and contracts with them to carry out this chapter.

(f) The state forester [COMMISSIONER] shall locate department personnel with forestry expertise throughout the state to facilitate public access to professional management services and other forest resources programs.

(g) The state forester [COMMISSIONER] may take other actions necessary and proper for the administration of this chapter, including the adoption of regulations under AS 44.62 (Administrative Procedure Act) and AS 41.17.047.

\* **Sec. 11.** AS 41.17.070(a) is amended to read:

(a) The state forester [COMMISSIONER] shall develop and continually maintain a long-range plan for the administration of this chapter that demonstrates that the provisions of AS 41.17.010 are being recognized and that the standards of AS 41.17.060 are being met. The state forester [COMMISSIONER] shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of this section.

\* **Sec. 12.** AS 41.17.070(b) is amended to read:

(b) To maintain a record of division decision making for public and agency review, the state forester [COMMISSIONER] shall compile and index each decision made under this chapter regarding directives, stop work orders, waivers from requirements, decisions of hearing officers, and decisions on appeals. The state forester [COMMISSIONER] shall submit a summary of this record annually to the board.

\* **Sec. 13.** AS 41.17.080 is amended to read:

**Sec. 41.17.080. Regulations.** (a) The state forester [COMMISSIONER] may adopt regulations necessary to accomplish the purposes of this chapter under AS 44.62 (Administrative Procedure Act) regarding forest practices such as

- (1) road construction and maintenance, including
  - (A) road location, construction, maintenance, and post-operation management or removal;
  - (B) landing location and construction;
  - (C) drainage structures;
  - (D) material sources and spoil disposal sites;
- (2) timber harvesting, including
  - (A) timber harvest unit planning and design;
  - (B) felling and bucking;
  - (C) cable yarding, shovel, tractor, and wheeled skidder systems;
  - (D) landing clean-up;
  - (E) slash disposal;
- (3) log transfer, sort yards, and storage facilities, including
  - (A) location, design, and construction;
  - (B) maintenance;
  - (C) closure;
  - (D) log storage, rafting, and identification;
- (4) reforestation, including
  - (A) site preparation and rehabilitation;
  - (B) prescribed burning;

(C) exemptions from reforestation requirements;

(5) prevention and suppression of forest insects and diseases;

(6) salvage logging;

(7) vegetative management; and

(8) fire and flood hazard management.

(b) The **state forester** [COMMISSIONER] shall adopt regulations specifying the information to be submitted under AS 41.17.090(c) in the detailed plan of operations to enable the division to determine whether the activities comply with the requirements of this chapter.

(c) The **state forester** [COMMISSIONER] may establish regions, districts, or other subdivisions of forest land in the state in which different regulations apply to reflect varying conditions in the state or to facilitate administration. In adopting regulations, the **state forester** [COMMISSIONER] shall make appropriate distinctions between public and private land.

(d) The **state forester** [COMMISSIONER] shall adopt only those regulations necessary to accomplish the purposes of this chapter and shall avoid regulations that increase operating costs without yielding significant benefits to public resources.

\* **Sec. 14.** AS 41.17.085(a) is amended to read:

(a) An operator may apply through the **state forester** [COMMISSIONER] for permits required by other state agencies to operate on forest land, which applications may be forwarded to the commissioner of environmental conservation for procedures under AS 46.35. The **state forester** [COMMISSIONER] shall notify the operator of the action taken.

\* **Sec. 15.** AS 41.17.087(b) is amended to read:

(b) The **state forester** [COMMISSIONER] shall adopt regulations that specify the standards under which a variation will be granted for harvesting timber within the riparian area of

(1) a low gradient Type A water body with a width of five feet or less;

and

(2) other appropriate water body types.

\* **Sec. 16.** AS 41.17.087(c) is amended to read:

(c) A determination by the state forester under (a) of this section and regulations by the state forester [COMMISSIONER] under (b) of this section shall give due deference under AS 41.17.098.

\* **Sec. 17.** AS 41.17.090(b) is amended to read:

(b) A forest landowner, timber owner, or operator may provide to the state forester [COMMISSIONER] a voluntary plan of operations that describes the long-term plans for timber harvesting. The purpose of a voluntary plan is to give the division and the public an early opportunity to review plans, to identify areas of concern, and to allow the agencies and the public to provide local knowledge and early notice of potential problems to the forest landowner, timber owner, or operator.

\* **Sec. 18.** AS 41.17.090(d) is amended to read:

(d) Within five days after receipt of a detailed plan of operations under (c) of this section, the state forester shall distribute the information received under (c) of this section to the deputy commissioner, affected state agencies, and coastal districts, and shall distribute the information received under (c)(1) of this section to each member of the public who has asked to receive copies of notifications for the affected area.

\* **Sec. 19.** AS 41.17.090(e) is amended to read:

(e) Within 30 days after receipt of a detailed plan of operations, the state forester shall review the plan to determine if the operations are consistent with this chapter and regulations adopted under this chapter. Operations may begin under the plan upon the expiration of the 30-day period or upon notice from the state forester that the review has been completed, whichever occurs first, unless the division has issued a stop work order for a particular portion of the plan or has notified the operator that a one-time, 10-day extension is necessary for agency review under AS 41.17.098(f). The operator may proceed with operations not covered by the stop work order, notice of field inspection, or the agency review. During the review of a detailed plan of operations, if a question arises concerning the proper classification of water body type for purposes of the standards in AS 41.17.116(a), the deputy commissioner [DEPARTMENT OF FISH AND GAME] may resolve the question.

\* **Sec. 20.** AS 41.17.098(a) is amended to read:

(a) In administering this chapter, the state forester [COMMISSIONER] shall

1 coordinate with other agencies, the deputy commissioner, and affected coastal  
 2 districts that have jurisdiction over activities subject to regulation under this chapter.

3 \* **Sec. 21.** AS 41.17.098(b) is amended to read:

4 (b) In a review or implementation of a detailed plan of operations under  
 5 AS 41.17.090 and in a decision on a proposed variation from requirements under  
 6 AS 41.17.087 , the state forester [COMMISSIONER] shall consider the comments of  
 7 the deputy commissioner, each affected state agency and, where applicable, coastal  
 8 districts.

9 \* **Sec. 22.** AS 41.17.098(c) is amended to read:

10 (c) The state forester [COMMISSIONER] shall give due deference to the  
 11 Department of Environmental Conservation in decisions concerning water quality.  
 12 The commissioner of environmental conservation retains the authority to adopt  
 13 nonpoint source pollution regulations for activities subject to this chapter to the extent  
 14 that regulations are not adopted by the state forester [COMMISSIONER OF  
 15 NATURAL RESOURCES] and approved by the commissioner of environmental  
 16 conservation under this chapter. The commissioner of environmental conservation  
 17 may withdraw approval of regulations adopted by the state forester  
 18 [COMMISSIONER OF NATURAL RESOURCES] under this chapter by following  
 19 the procedure for the adoption, amendment, and repeal of regulations under  
 20 AS 44.62.180 - 44.62.290.

21 \* **Sec. 23.** AS 41.17.098(d) is amended to read:

22 (d) The state forester [COMMISSIONER] shall recognize the expertise of the  
 23 deputy commissioner [DEPARTMENT OF FISH AND GAME] with regard to fish  
 24 and wildlife habitat. On private land, the state forester [COMMISSIONER] shall  
 25 give due deference to the deputy commissioner [DEPARTMENT OF FISH AND  
 26 GAME] regarding effects on fish habitat from timber operations including variations  
 27 to riparian standards, designation of alternative site-specific riparian protection plans,  
 28 and road location decisions within riparian areas. On public land, the state forester  
 29 [COMMISSIONER] shall give due deference to the deputy commissioner  
 30 [DEPARTMENT OF FISH AND GAME] regarding effects on fish and wildlife  
 31 habitat from timber operations including timber harvest in riparian areas, variations to

1 riparian standards, and road location decisions within riparian areas. In making  
 2 decisions under AS 41.17.087, the state forester [COMMISSIONER] shall recognize  
 3 fish habitat as the primary value in riparian areas.

4 \* **Sec. 24.** AS 41.17.098(e) is amended to read:

5 (e) In this section, "due deference" means that deference that is appropriate in  
 6 the context of the agency's or deputy commissioner's expertise and area of  
 7 responsibility and all the evidence available to support a factual assertion. Where due  
 8 deference is given, if the state forester [COMMISSIONER] does not agree with a  
 9 commenting agency or the deputy commissioner, the state forester  
 10 [COMMISSIONER] shall prepare a written statement of the reasons for the  
 11 disagreement.

12 \* **Sec. 25.** AS 41.17.110 is amended to read:

13 **Sec. 41.17.110. Conversion of forest land to other uses.** An intention to  
 14 convert forest land to other uses after timber harvesting may be stated in the  
 15 notification submitted under AS 41.17.090. In that event, reforestation requirements  
 16 adopted under this chapter do not apply, except that conversion shall be completed  
 17 during the time set by regulation for minimum reforestation of the land, and other  
 18 requirements for revegetation may be imposed to the extent permitted by law. If the  
 19 state forester [COMMISSIONER] finds at any time that the responsible party has  
 20 failed to conform to the intent to convert as stated in the notification, the state  
 21 forester [COMMISSIONER] shall revoke approval of the conversion and require full  
 22 compliance with reforestation requirements.

23 \* **Sec. 26.** AS 41.17.115 is amended to read:

24 **Sec. 41.17.115. Management of riparian areas; regulations.** (a) The state  
 25 forester [COMMISSIONER] shall protect riparian areas from the significant adverse  
 26 effects of timber harvest activities on fish habitat and water quality. The management  
 27 intent for riparian areas is the adequate preservation of fish habitat by maintaining a  
 28 short- and long-term source of large woody debris, stream bank stability, channel  
 29 morphology, water temperatures, stream flows, water quality, adequate nutrient  
 30 cycling, food sources, clean spawning gravels, and sunlight.

31 (b) The state forester [COMMISSIONER] shall adopt regulations for the



1 protection of riparian areas; the regulations may include higher standards of protection  
 2 for fish and other public resources on land managed by the department than on other  
 3 public land or private land. The regulations may vary by region of the state and must  
 4 take into consideration reasonable classification of water bodies and the economic  
 5 feasibility of timber operations.

6 \* **Sec. 27.** AS 41.17.116(b) is amended to read:

7 (b) The **state forester** [COMMISSIONER] shall adopt regulations for private  
 8 land outside of the coastal forest of spruce or hemlock that designate the riparian areas  
 9 to be protected and the restrictions on timber harvesting operations within the areas  
 10 that are necessary for their protection under the management goals established in  
 11 AS 41.17.115.

12 \* **Sec. 28.** AS 41.17.118(b) is amended to read:

13 (b) The **department** [COMMISSIONER] may impose additional riparian  
 14 protection standards for timber harvest operations through the adoption of land use  
 15 plans under AS 38.04.065 and under forest management plans and reports under  
 16 AS 38.05.112 and AS 41.17.230.

17 \* **Sec. 29.** AS 41.17.118(c) is amended to read:

18 (c) In the absence of a site-specific determination by the **deputy**  
 19 **commissioner** [DEPARTMENT OF FISH AND GAME], the **state forester**  
 20 [COMMISSIONER] shall presume for planning purposes that a stream is anadromous  
 21 if it is connected to anadromous waters that are without **department** [DEPARTMENT  
 22 OF FISH AND GAME] documentation of a physical blockage and has a stream  
 23 gradient of 8 percent or less.

24 \* **Sec. 30.** AS 41.17.119 is amended to read:

25 **Sec. 41.17.119. Minimum riparian standards for other public land.** On  
 26 other public land, harvest of timber may not occur

27 (1) within 100 feet from the shore or bank of an anadromous or high  
 28 value resident fish water body that is located south of the Alaska Range;

29 (2) within 100 feet immediately adjacent to an anadromous or high  
 30 value resident fish water body north of the Alaska Range unless the **division**  
 31 [COMMISSIONER] determines that adequate protection remains for the fish habitat.

1 \* **Sec. 31.** AS 41.17.120 is amended to read:

2           **Sec. 41.17.120. Inspections and investigations.** The state forester  
 3 [COMMISSIONER] may inspect and investigate forest land and activities on it and  
 4 may enter upon it in conjunction with any operations as necessary to ensure  
 5 compliance with applicable regulations and requirements and to otherwise enforce the  
 6 provisions of this chapter. Other state agencies and the deputy commissioner have  
 7 this same authority to the extent necessary to enforce their own laws and regulations  
 8 on forest land. Those agencies, the deputy commissioner, and the state forester  
 9 [COMMISSIONER] shall coordinate their actions under this section.

10 \* **Sec. 32.** AS 41.17.900(c) is amended to read:

11           (c) The state forester [COMMISSIONER] shall exempt by regulation from  
 12 the provisions of this chapter

13                   (1) minor, small scale, or incidental commercial operations of little  
 14 significance with respect to the purposes of this chapter; and

15                   (2) operations for primarily noncommercial purposes, including but  
 16 not limited to the harvesting of timber for personal use.

17 \* **Sec. 33.** AS 41.17.900(d) is amended to read:

18           (d) Notwithstanding any other provision of this chapter, the state forester and  
 19 the commissioner may not employ the authority vested by this chapter so as to  
 20 duplicate or preempt the statutory authority of other state agencies to adopt regulations  
 21 or undertake other administrative actions governing resources, values, or activities on  
 22 forest land except for

23                   (1) regulations under the Coastal Management Act; and

24                   (2) regulations, if authorized by the commissioner of environmental  
 25 conservation, relating to control of nonpoint source pollution.

26 \* **Sec. 34.** AS 41.17 is amended by adding a new section to read:

27           **Sec. 41.17.905. Independent authority.** With respect to matters governed by  
 28 this chapter, the deputy commissioner does not have supervisory authority over the  
 29 state forester.

30 \* **Sec. 35.** AS 41.17.910(a) is amended to read:

31           (a) The deputy commissioner [DEPARTMENT OF FISH AND GAME] and

1 the **state forester** [COMMISSIONER] shall work cooperatively with private forest  
 2 landowners and timber owners to protect, maintain, and enhance wildlife habitat to the  
 3 maximum extent practicable, consistent with the interests of the owners in the use of  
 4 their timber resources.

5 \* **Sec. 36.** AS 41.17.910(b) is amended to read:

6 (b) The **deputy commissioner** [DEPARTMENT OF FISH AND GAME]  
 7 shall provide educational and technical assistance and extension services to owners of  
 8 private forest land or timber to assist in identifying important wildlife habitat and to  
 9 assist in designing voluntary management techniques that minimize adverse effects on  
 10 wildlife habitat.

11 \* **Sec. 37.** AS 41.17.910(c) is amended to read:

12 (c) The **deputy commissioner** [DEPARTMENT OF FISH AND GAME] and  
 13 the landowner shall cooperate in identifying areas of important wildlife habitat on  
 14 private forest land and in developing methods for their protection. Methods of  
 15 protection for wildlife habitat may include, with the agreement of the landowner, the  
 16 purchase of fee title, purchase of conservation easements, and land exchanges.

17 \* **Sec. 38.** AS 41.17.950(1) is amended to read:

18 (1) "anadromous water body" means the portion of a fresh water body  
 19 or estuarine area that

20 (A) is cataloged under **AS 41.14.870** [AS 16.05.870] as  
 21 important for anadromous fish; or

22 (B) is not cataloged under **AS 41.14.870** [AS 16.05.870] as  
 23 important for anadromous fish but has been determined by the **deputy**  
 24 **commissioner** [DEPARTMENT OF FISH AND GAME] to contain or exhibit  
 25 evidence of anadromous fish in which event the anadromous portion of the  
 26 stream or waterway extends up to the first point of physical blockage;

27 \* **Sec. 39.** AS 41.17.950 is amended by adding a new paragraph to read:

28 (23) "deputy commissioner" means the deputy commissioner of natural  
 29 resources appointed under AS 44.37.055.

30 \* **Sec. 40.** AS 44.37 is amended by adding new sections to read:

31 **Sec. 44.37.055. Deputy commissioner.** The commissioner of natural

resources shall appoint a deputy commissioner of natural resources.

**Sec. 44.37.060. Certain powers and duties of the deputy commissioner.**

The deputy commissioner of natural resources appointed under AS 44.37.055 has, but not by way of limitation, the following powers and duties regarding functions under AS 41.14 and AS 41.17:

(1) to adopt regulations to carry out the purposes of AS 41.14.840 - 41.14.900;

(2) to enter into cooperative agreements with agencies of the federal government, educational institutions, or other agencies or organizations, when in the public interest, to carry out the purposes of AS 41.14.840 - 41.14.900;

(3) to initiate or conduct research necessary or advisable to carry out the purposes of AS 41.14.840 - 41.14.900;

(4) to perform the functions assigned in AS 41.17.

\* **Sec. 41.** AS 44.62.330(a)(48) is amended to read:

(48) the Department of Natural Resources [FISH AND GAME] as to functions relating to the protection of fish and game under AS 41.14.870 [AS 16.05.870];

\* **Sec. 42.** AS 46.15.020(b) is amended to read:

(b) The commissioner shall

(1) adopt procedural and substantive regulations to carry out the provisions of this chapter, taking into consideration the responsibilities of the Department of Environmental Conservation under AS 46.03 and the Department of Fish and Game under AS 16;

(2) develop and maintain a standardized procedure for processing applications and the issuance of authorizations, permits, and certifications under this chapter; shall keep a public record of all applications for permits and certificates and other documents filed in the commissioner's office; shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator; shall require that temporary water use authorizations are valid only to the extent that the water withdrawal and use complies with applicable requirements of AS 41.14.870

1 [AS 16.05.870]; and shall make the record of applications, including temporary water  
 2 use applications under AS 46.15.155 that have been accepted as complete,  
 3 authorizations, permits, certificates, amendments, and orders affecting them available  
 4 to the public on the Internet;

5 (3) cooperate with, assist, advise, and coordinate plans with the  
 6 federal, state, and local agencies, including local soil and water conservation districts,  
 7 in matters relating to the appropriation, use, conservation, quality, disposal, or control  
 8 of waters and activities related thereto;

9 (4) prescribe fees or service charges for any public service rendered  
 10 consistent with AS 37.10.050 - 37.10.058, except that the department may charge  
 11 under regulations adopted by the department an annual \$50 administrative service fee  
 12 to maintain the water management program and a water conservation fee under  
 13 AS 46.15.035;

14 (5) before February 1 of each year, prepare a report describing the  
 15 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner  
 16 shall notify the legislature that the report is available; the report must include

17 (A) information on the number of applications and  
 18 appropriations for the removal of water from one hydrological unit to another  
 19 that were requested and that were granted and on the amounts of water  
 20 involved;

21 (B) information on the number and location of sales of water  
 22 conducted by the commissioner and on the volume of water sold;

23 (C) recommendations of the commissioner for changes in state  
 24 water law; and

25 (D) a description of state revenue and expenses related to  
 26 activities under AS 46.15.035 and 46.15.037.

27 \* **Sec. 43.** AS 46.35.200(4) is amended to read:

28 (4) "permit" means each of the following licenses, permits or  
 29 authorizations required to be obtained from a state agency before constructing or  
 30 operating a project in the state, or any other license, permit or authorization which  
 31 may be designated by the commissioner:

- 1 (A) emission control permit - AS 46.14, 18 AAC 50.120;
- 2 (B) open burning permit - AS 46.03.020, 18 AAC 50.120;
- 3 (C) burning permit during fire season - AS 41.15.050, 11 AAC
- 4 92.010;
- 5 (D) waste water disposal permit - AS 46.03.100, 18 AAC 72;
- 6 (E) solid waste disposal permit - AS 46.03.100, 18 AAC 60;
- 7 (F) brine or other salt water waste disposal permit -
- 8 AS 31.05.030, 11 AAC 22.250;
- 9 (G) tidelands permit - AS 38.05.820, 11 AAC 62.710;
- 10 (H) tidelands right-of-way or easement permit - AS 38.05.820,
- 11 11 AAC 62.810;
- 12 (I) authorization for tidelands transportation - AS 38.05.110,
- 13 11 AAC 76.205;
- 14 (J) tide and submerged lands prospecting permit -
- 15 AS 38.05.250;
- 16 (K) mineral and geothermal prospecting permits -
- 17 AS 38.05.145;
- 18 (L) coal development permit - AS 27.20.010, 11 AAC 46.010;
- 19 (M) dam construction permit - AS 46.15.040, 11 AAC 72.060;
- 20 (N) water well permit - AS 31.05.030, 11 AAC 22.140;
- 21 (O) permit to appropriate water - AS 46.15.040, 11 AAC
- 22 72.050;
- 23 (P) permit for use of timber or materials - AS 38.05.110,
- 24 11 AAC 76.185;
- 25 (Q) special material use permit - AS 38.05.115, 11 AAC
- 26 76.540;
- 27 (R) special land use permit - AS 38.05.035, 11 AAC 58.210;
- 28 (S) limited personal use permit - AS 38.05.820, 11 AAC
- 29 62.820;
- 30 (T) preferred use permit - AS 46.15.040, 11 AAC 72.160;
- 31 (U) surface use permit - AS 38.05.255, 11 AAC 86.600;

(V) miscellaneous state land use permit - AS 38.05.035,  
11 AAC 96.010;

(W) anadromous fish protection permit - **former** AS 16.05.870,  
5 AAC 95.100, **AS 41.14.870, and regulations adopted under those**  
**statutes**;

(X) critical habitat area permit - AS 16.20.520 - 16.20.530;  
(Y) state game refuge land permit - AS 16.20.050 - 16.20.060;  
(Z) state park incompatible use permit - AS 41.21.020, 11 AAC  
18.010;

(AA) pesticides permit - AS 46.03.320, 18 AAC 90;  
(BB) surface oiling permit - AS 46.03.740, 18 AAC 75;  
(CC) encroachment permit - AS 19.25.200;  
(DD) utility permit - AS 19.25.010;  
(EE) driveway permit - AS 19.05.020, 17 AAC 10.020;  
(FF) access roads permit - AS 41.21.020, 11 AAC 18.020;  
(GG) right-of-way and easement permits - AS 38.05.850,  
11 AAC 58.200;  
(HH) right-of-way permit - AS 38.05.850;

\* **Sec. 44.** AS 16.05.840, 16.05.850, 16.05.860, 16.05.870, 16.05.880, 16.05.890,  
16.05.895, and 16.05.900 are repealed.

\* **Sec. 45.** The uncoded law of the State of Alaska is amended by adding a new section to  
read:

#### RETIREMENT SYSTEM STATUS OF CERTAIN TRANSFERRED EMPLOYEES.

(a) Notwithstanding sec. 4, ch. 27, SLA 1983, an employee of the Department of Fish and  
Game who, on the day before the effective date of this Order, as authorized by sec. 4, ch. 27,  
SLA 1983 is accruing service credit as a peace officer under AS 39.35 by virtue of having  
been, on June 23, 1983, in a position as a "qualified employee of the Department of Fish and  
Game," and whose position is transferred to the Department of Natural Resources as a result  
of this Order, continues to accrue service credit as a peace officer under AS 39.35 after the  
transfer as long as the employee remains in a position described in this subsection, in the  
Department of Natural Resources.

1 (b) Nothing in this section may be construed as guaranteeing continued employment  
2 rights to any state employee.

3 (c) In this section, "qualified employee of the Department of Fish and Game" has the  
4 meaning given in AS 39.35.680 as that statute existed on June 22, 1983.

5 \* **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 TRANSITION. (a) Litigation, hearings, investigations, and other proceedings  
8 pending under a law repealed by this Order, or in connection with functions transferred by  
9 this Order, continue in effect and may be continued and completed notwithstanding a transfer  
10 or repeal provided in this Order.

11 (b) Regulations adopted to implement former AS 16.05.840 - 16.05.860 and former  
12 AS 16.05.870 - 16.05.895 and to implement AS 41.17 and in effect on April 14, 2003, remain  
13 in effect and may continue to be implemented and enforced, consistent with the changes made  
14 by this Order, until amended or repealed.

15 (c) Contracts, rights, liabilities, and obligations created by or under a law repealed by  
16 this Order, and in effect on April 14, 2003, remain in effect notwithstanding this Order's  
17 taking effect. Records, equipment, appropriations, and other property of an agency of the  
18 state whose functions are transferred under this Order shall be transferred to implement the  
19 provisions of this Order.

20 \* **Sec. 47.** This Order takes effect April 15, 2003.

DATED: \_\_\_\_\_

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Frank H. Murkowski  
Governor